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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 8th May, 1970:—

I

BILL No. X OF 1970

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-first year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1970. Short title.

2. Article 291 of the Constitution shall be re-numbered as clause (*1*) of that article and after the said clause as so re-numbered, the following clause shall be inserted, namely:— Amendment of article 291.

"(2) No payment under this article shall be made after the 31st day of December, 1970."

STATEMENT OF OBJECTS AND REASONS

The circumstances under which the privy purses were originally given to the erstwhile rulers of Indian States have changed. During the last 16 years, these ex-rulers have drawn huge amounts from the exchequer as privy purses apart from enjoying a number of other privileges. In addition to the privy purses, they also are owners of huge properties, treasures and other material wealth.

In view of the objectives of social justice of removal of wide disparities in income, and the widespread public demand for the abolition of such privileges, it is incongruous to continue the payment of privy purses.

Hence the Bill.

BHUPESH GUPTA.

II

BILL NO. IX OF 1970

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1970. Short title.

2. Article 314 of the Constitution shall be omitted. Omission of article 314

3. It is hereby declared that any agreement in relation to the rights of service executed with the officers referred to in article 314 by the Government of India and the Provincial Governments shall stand abrogated. Abrogation of rights of officers of certain services.

STATEMENT OF OBJECTS AND REASONS

It will be recalled that Shri Jawaharlal Nehru once described the Indian Civil Service as "kept Service". The history of British rule in India is replete with the unpatriotic, anti-national and aggressive activities of the members of the Indian Civil Service. This service was deliberately created by the British Imperialists to perpetuate the British rule in this country and use some Indians as the servitors of the British Empire. The members of the Indian Civil Service took pride in suppression of the freedom struggle and persecuting freedom fighters. A kind of myth about their so-called efficiency was built up by the British rulers. Actually the so-called efficiency worked to the terrible detriment of the nation and resulted in degradation in our public life. The I.C.S. people have been heavily paid both during the British rule and also thereafter. In fact, some crores of rupees worth of foreign exchange have been spent from our Sterling assets to pay as pensions and other benefits to the retired I.C.S. men and other British officials.

The special privileges were extended to the Members of the Indian Civil Service as the price of limitless treachery. There is no reason why these privileges should have continued in free India even for a single moment. The past service of the I.C.S. under the British should have been punished, and not rewarded.

Originally there was no proposal before the Constituent Assembly to grant these special privileges as under article 314 of the Constitution. But the provision was made later at the insistance by Whitehall in the United Kingdom and by the I.C.S. elements still in service after independence. They committed a fraud on the Constituent Assembly. In the recent years, it has been seen how these I.C.S. people maintain close link with the big business houses and find highly paid jobs with them immediately after retirement. The Indian Civil Service provides a kind of conduit for big business houses' influence on the administration. The I.C.S. officers are bureaucratic, snobbish and ante-people in outlook and approach. They are completely divorced from the masses.

Much of the corruption in high places is due to these gentlemen of the Indian Civil Service who are not ashamed of their past under the British and who parade their friendship with the monopolists. Not only must the protection of salary and privileges of these I.C.S. people go, but the relics of the service must be wiped out by compulsory retiring all existing I.C.S. officers still in service without, however, offering them anything more than what is given to the members of the Indian Administrative Service in comparable circumstances. We must put an end to this shameful chapter.

Hence this Bill.

BHUPESH GUPTA

III

BILL NO. XI OF 1970

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-first year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1970. Short title.

2. In article 143 of the Constitution, to clause (*1*), the following proviso shall be added, namely:— Amendment of Article 143.

"Provided that if not less than one-tenth of the total number of members of Parliament make a representation to the President in writing that any Bill pending before either House of Parliament contains provision which in their opinion takes away or abridges any of the rights conferred by Part III, the President shall refer every such Bill to the Supreme Court for its opinion and either House of Parliament shall not proceed with that Bill until such opinion has been obtained."

STATEMENT OF OBJECTS AND REASONS

Under article 143 of the Constitution, the President may consult the Supreme Court for its advisory opinion if it appears that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it. Instances may arise in the future as they have arisen in the past, when serious doubts may be entertained by members of Parliament that the provisions of a Bill pending before Parliament might violate the fundamental rights conferred by Part III of the Constitution. It seems necessary to make it obligatory for the President to refer all such Bills to the Supreme Court for its advisory opinion before Parliament proceeds with them, so that Parliament may not enact legislation which the courts might declare void subsequently. Hence this Bill.

BUPESH GUPTA.

IV

BILL NO. XIV OF 1970

A Bill to regulate the scheme of automation in any industry or office and matters connected therewith.

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Automation (Regulation) Act, 1970.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act,—

(*a*) "scheme of automation" means—

(*i*) introduction of electronic computers for purposes of taking over clerical work in industries and offices;

(*ii*) introduction of automatic machinery or processes in industrial production;

(*iii*) introduction of mechanical devices for handling cargoes in railways, ports and docks;

(b) "prescribed" means prescribed by rules made under this Act.

Composition of National Council.

3. (1) This Central Government shall, by notification in the Official Gazette, constitute a National Council consisting of a Chairman and twenty other Members.

(2) The Chairman shall be either a retired Judge of the Supreme Court of India or a Judge of a High Court of a State and he shall be appointed by the President in consultation with the Chief Justice of India.

(3) Of the other Members—

(a) ten shall be the representatives of the registered Trade Unions to be appointed by the Central Government in the prescribed manner on the advice of the Chairman;

(b) five shall be the representatives of the private enterprises to be appointed by the Central Government in the prescribed manner on the advice of the Chairman;

(c) two shall be the representatives of the State Governments to be appointed by the Central Government in the prescribed manner on the advice of the Chairman;

(d) three shall be the nominees of the Central Government.

Functions of National Council.

4. (1) Every scheme of automation in any industry or office owned by, or under the authority of, the Central Government or in any industry or office owned by, or under the authority of, a State Government or in any industry or office owned by, or under the authority of, a private body or in any industry or office owned by, or under the authority of a local-self Government in a State, shall be submitted by the person or authority concerned for examination and scrutiny to the National Council constituted under section 3 of this Act.

(2) After a scheme of automation is submitted to the National Council, it shall hold its proceedings expeditiously and consider in particular—

(a) whether such a scheme leads to retrenchment in services or future unemployment in the country; and

(b) whether such a scheme is proposed to be undertaken in consultation with the affected employees.

(3) On the conclusion of proceedings under sub-section (2), the Council shall submit its recommendation in the form of a Report to the Central Government.

(4) The Report shall be signed by the Chairman on behalf of the Council:

Provided that in case the Chairman of the Council is absent or is not readily available, the Council shall choose any other Member to sign the Report on behalf of the Council

(5) All questions at any sitting of the Council shall be determined by a majority of votes of the Members present and voting, other than the Chairman or person acting as Chairman.

The Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(6) The Report of the Council shall, within a period of thirty days from the date of its receipt by the Central Government, be published in the Official Gazette.

(7) On receipt of the Report, the Central Government shall, as soon as possible, take a decision thereon and that decision shall also be published in the Official Gazette.

(8) The decision taken by the Central Government on the recommendation of the Council shall be final and shall not be called in question by any court of law in any manner whatsoever.

(9) The decision of the Central Government shall be enforceable from the date of its publication in the Official Gazette under sub-section (7).

Penalty.

5. Any person who contravenes the decision of the Central Government under sub-section (8) of section 4 of this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where the contravention is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the contravention continues after the conviction for the first, and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion, has been injured by such contravention.

Cognizance of offences.

6. (1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the Central Government.

(2) No court inferior to that of a Presidency Magistrate, or a Magistrate of the first class shall try any offence punishable under this Act.

Power to make rules.

7. (1) The Central Government shall, subject to the condition of previous publication, make rules providing for all or any of the following matters, namely:—

(a) the manner in which the Members to the National Council are to be appointed under sub-section (3) of section 3;

(b) the procedure of National Council including rules as to the summoning of witnesses, the production of documents relevant to the subject-matter of an inquiry or investigation, the number of Members necessary to form a quorum;

(c) the filling of casual vacancies in the National Council;

(d) the duration of the office of Members and Chairman of the National Council;

(*e*) the allowances admissible to Members and Chairman of the National Council;

(*f*) the ministerial establishment to be allotted to the National Council and the salaries and allowances payable to members of the staff of such an establishment;

(*g*) the conditions subject to which parties may be represented by legal practitioners in proceedings under this Act before the National Council;

(*h*) any other matter which is to be or may be prescribed.

(2) Every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Our country is already facing a serious unemployment problem. If automation is introduced in industries and offices, it will aggravate this problem to an alarming extent. The present Bill seeks to create a National Council where every proposal for automation will have to be submitted for examination and scrutiny and the Council will consider each proposal on its merits, particularly keeping in view the present unemployment situation in the country and the interests of the affected employees.

CHITTA BASU.

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the Central Government shall constitute a National Council consisting of a Chairman and twenty other Members. Clause 7 provides *inter alia* that the Central Government shall frame rules for the payment of allowances to Members and Chairman of the National Council, allotment of a ministerial establishment to such a Council and payment of salaries and allowances to members of the staff of such an establishment.

The amount of expenditure will be of a recurring nature and as it will be determined under the rules, it is not possible, at present, to give an estimate thereof.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 read with clause 7 of the Bill empowers the Central Government to frame rules to prescribe the manner in which the representatives of the registered Trade Unions, the representatives of the private enterprises and the representatives of the State Governments will be appointed by the Central Government to the National Council.

Clause 7 empowers the Central Government to frame rules on procedural matters of the National Council, regarding payment of allowances to the Members and the Chairman of this Council and allotment of ministerial establishment thereof, including the salaries and allowances payable to members of the staff of such an establishment.

The delegation of legislative power is, therefore of a normal character.

V

BILL No. VII OF 1970

A Bill to provide for a uniform code of procedure for the adoption of Children

BE it enacted by Parliament in the Twenty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (*1*) This Act may be called the Adoption of Children Act, 1970.

(*2*) It extends to the whole of India except the State of Jammu and Kashmir.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires—

(*a*) "adoption order" means an order made by the court under section 5;

(*b*) "child" means a person, whether male or female, who, on or before the date on which an application for an adoption order in respect of such person is made, has not completed the age of eighteen years;

(c) "court" means in any area for which there is a city civil court, that court and in any other area, the principal civil court of original jurisdiction;

(d) "guardian" means a person who has been appointed legal guardian of a person under the Guardians and Wards Act, 1890, or is a *de facto* guardian or is a testamentary guardian; 8 of 1890.

(e) "institution" means a social welfare institution, by whatever name called, whether residential or non-residential, which holds a valid licence as prescribed;

(f) "prescribed" means prescribed by rules made under this Act.

Savings.

3. Nothing contained in this Act shall affect the operation of the Hindu Adoptions and Maintenance Act, 1956 relating to adoptions among Hindus or the operation of any custom relating to adoption among others: 78 of 1956.

Provided that nothwithstanding the Hindu Adoption and Maintenance Act, 1956 or such customs, no adoption made in accordance with the provisions of this Act shall be void merely on the ground that such adoption has not been made in accordance with that Act or custom.

CHAPTER II

ADOPTIONS AND ADOPTION ORDERS

Adoptions to be regulated by this Act.

4. (*1*) Subject to the provisions of section 3, no adoption shall be made except in accordance with the provisions of this Act and any adoption made in contravention of such provisions shall be void.

(*2*) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he could not have acquired except by reason of the adoption, nor destroy the rights of such person in the family of his birth.

Adoption of children by adoption order.

5. (*1*) A child may be adopted under this Act by an adoption order made by the court in that behalf and not in any other manner.

(*2*) Subject to the provisions of this Act, the court may, upon an application made as prescribed by a person for the adoption of a child, make an adoption order in respect of such child.

Persons who may adopt.

6. (*1*) Any person who has completed the age of twenty-one years and is of sound mind may adopt a child under this Act:

Provided that the father or mother of a child born out of wedlock may adopt the child notwithstanding that the father of the mother has not completed the age of twenty-one years.

(*2*) A person who is married shall not be entitled to adopt a child born out of wedlock unless such person is the father or mother of the child:

Provided that the husband and the wife, and where there are more than one wife, all the wives, may jointly adopt such a child; and in no other case shall more than one person be entitled jointly to adopt a child.

(*3*) The person or each of the persons seeking to adopt a child shall, except where such person or each such person is a parent of the child, be at least twenty-one years older than the child.

Persons who may be adopted.

7. A child shall not be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(*a*) that he has not already been adopted;

(*b*) that he is not or has not been married unless there is a custom or usage applicable to the parties which permits persons who are or have been married being taken in adoption.

Other conditions for a valid adoption.

8. (*1*) No adoption order shall be made where the person making an application under section 13 for an adoption order is a male and the child to be adopted is a female, unless the court is satisfied that the applicant is the father of the child or that there are other special circumstances which justify the making of an adoption order.

(*2*) Except as provided in section 6, no adoption order shall be made for the adoption of the same child by two or more persons.

Consent for adoption.

9. (*1*) An adoption order in respect of a child to be adopted shall not be made—

(*a*) in any case, except with the consent of the person who is a parent or guardian of the child; and

(*b*) where the child is in the care and custody of an institution, except with the consent of the institution given on its behalf by any person entrusted with, or in charge of, its management:

Provided that the consent of the father of a child born out of wedlock shall not be required in the case of adoption of such child notwithstanding—

(*i*) that the father of such a child has been ordered by a court of competent jurisdiction to maintain the child; or

(*ii*) that after the consent of the mother of the child to such adoption has been given, a marriage has taken place between the father and the mother.

(*2*) The consent referred to in sub-section (*1*) may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the child is proposed to be brought up) without knowing the identity of the applicant for the adoption order.

(*3*) Every person whose consent is required under sub-section (*1*) may signify such consent by appearing before the court before whom an application for an adoption order is pending.

(*4*) A person whose consent is not signified in accordance with sub-section (*3*), may signify the same by a document executed by him and such document shall be produced before the court for the purpose of proving such consent:

Provided that where such document is not produced before the court by the person by whom it has been executed, the execution of such document whether the document is executed before or after the filing of the application for an adoption order, shall be attested—

(*a*) if it is executed in India, by a Magistrate of the first class;

(*b*) if it is executed outside India, by such Indian diplomatic or consular officer as the Central Government may specify for this purpose.

(5) Where any such document has been attested as mentioned in the proviso to sub-section (4), it shall be admissible in evidence without further proof of the signature either of the person by whom it has been executed or of the person by whom it has been attested.

Power of court to dispense with consent.

10. (*1*) The court may dispense with any consent required under the Act if it is satisfied that the person whose consent is to be dispensed with—

(*a*) has abandoned, neglected or persistently illtreated the child; or

(*b*) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably.

(*2*) If the court is satisfied that any person whose consent is required under the Act has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the child, the court may dispense with his consent notwithstanding the provisions contained in sub-section (*1*).

(*3*) Where a person who has given his consent to the making of an adoption order in respect of a child without knowing the identity of the applicant therefor, subsequently withdraws his consent on the ground only that he does not know the identity of the applicant his consent shall for the purpose of sub-section (*1*) be deemed to be withheld unreasonably.

Withdrawal of consents.

11. Where any consent to an adoption of a child by a person is given by any parent or guardian of the child or by an institution having the care and custody of the child, the consent shall not be withdrawn at any time while an application by the said person to adopt the child is pending or until the said person has a reasonable opportunity to make an application to adopt the child.

Consent revocable on grounds of fraud etc.

12. Any consent to an adoption of a child given by a parent or a guardian or an institution may be revoked on the ground that it has been obtained by fraud, undue influence, coercion or mistake.

CHAPTER III

JURISDICTION AND PROCEDURE

Court having jurisdiction to entertain applications.

13. Every application for an adoption order shall be made to the court having jurisdiction in the place where the child to be adopted or the applicant resides on the date of the application.

Parties to, and form and contents of application.

14. (*1*) An applicant shall join as respondents to his application—

(*a*) every person who is a parent or guardian of the child proposed to be adopted; and

(*b*) where the child is not in the care and custody of the applicant, the person or the institution in whose care and custody the child is on the date of the application.

(*2*) Every application for an adoption order shall be by a petition to the court signed and verified by the applicant in the manner prescribed in the Code of Civil Procedure, 1908 for the signing and verification of a plaint and shall state— 5 of 1908.

(*a*) the name of the court in which the application is filed;

(*b*) the name, father's name, age, sex, marital condition and present and permanent address of the applicant;

(*c*) the name, father's name, present and permanent address, of each of the respondents, so far as they can be ascertained;

(*d*) where the child to be adopted is already in the care and custody of the applicant, the name and address of the person or the institution from whom the child has been received;

(*e*) the name, sex, place and date of birth, if known, of the child to be adopted and where the age of the child cannot be ascertained, the approximate age according to expert medical opinion;

(*f*) the names, if known, and the place of residence, if known, of the parents or the guardians of the child to be adopted;

(*g*) whether the parent of the child is a minor or is otherwise under a legal disability;

(*h*) whether the child to be adopted has no parent or guardian living, or where the whereabouts of the child's parent or guardian is not known to the applicant, the name of a near relative, if any, of the child to be adopted;

(*i*) the name to be given to the child to be adopted and the religious persuasion in which it is to be brought up;

(*j*) the name of each person or the institution whose consent is required under section 9 and whether such consent has been obtained;

(*k*) whether any judgment, decree or order has been made or passed by any court in India or outside affecting, or relating to, the adoption or care and custody of the child to be adopted and the rights, whether adoptive, custodial or parental, of the applicant (including any judgement, decree or order rejecting or dismissing on a previous occasion an application made by the applicant for the adoption of that or any other child);

(*l*) whether the child to be adopted is a child of the applicant's son or daughter; and where the child is related to the applicant within two degrees either on his paternal side or on his maternal side, the exact relationship of the child to the applicant; and

(*m*) such other matters as may be prescribed.

Procedure before the court.

15. (*1*) Subject to the provisions of this Act and the rules made thereunder, every application for an adoption order shall be heard and determined by the court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. 5 of 1908.

1 of 1872. (2) The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act, apply in all respects to the proceedings on such application:

Provided that the court may receive as evidence any statement, document, information or matter that may in its opinion assist it to deal effectually with the application whether the same would be admissible or not under the Indian Evidence Act, 1872.

Report on application if required by court.

16. (*1*) On the making of an application for an adoption order in respect of a child, the court may, before it makes an interim order or makes an adoption order without first making an interim order, require any person or institution to inquire into the following matters and make a report thereon, namely:—

(*a*) the contents of the application;

(*b*) the character, reputation and general standing of the applicant in the community;

(*c*) whether the applicant is a fit person to adopt the child and the child is a fit person to be adopted by the applicant;

(*d*) any other matter on which the court may require information in connection with the application.

(2) The report shall be a confidential document and shall not be open to inspection by or on behalf of the parties to the application or anybody else; but if the report contains any findings adverse to the applicant or the child, the court shall furnish, free of cost, copies of such adverse findings to the parties and give them an opportunity to rebut the same.

(3) The person or the institution by whom a report is made under this section shall be entitled to appear before the court at any stage of the proceedings in connection with the application and to examine any witness, adduce any evidence and address the court on any point relating to the matters covered by the report.

Interim order.

17. (*1*) Subject to the provisions of this section, the court may postpone the determination of an application for an adoption order in respect of a child to be adopted and make an interim order giving the care and custody of the child to the applicant for such period as the court thinks fit (hereinafter in this Act referred to as the period of operation of the interim order) by way of a probationary period, upon such terms as regards the provision for the maintenance and education, and the supervision of the interests and welfare, of the child as the court may think fit.

(2) All the necessary consents as are required to an adoption order shall be obligatory to an interim order but subject to a like power of the court to dispense with any such consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of any provisions of this Act.

(4) Where neither an adoption order nor an order dismissing the application for an adoption order has been made during the period of operation of an interim order the court may, on application made by the

applicant in this behalf, extend the period of operation of the interim order.

(5) During the period or extended period of operation of the interim order—

(a) any representative of an institution duly authorised in writing in this behalf may, at all reasonable times, visit and enter the place in which the child is residing:

Provided that the representative shall on demand by any person present at the place in which the child is residing, produce before such person the written authority before he enters the residence;

(b) the child shall not be taken out of India without the leave of the court;

(c) the applicant shall give to the court at least seven days' notice before changing the residence in which the child is residing;

Provided that where an immediate change of residence is necessitated on account of unforeseen circumstances, it shall be sufficient if notice is given within forty-eight hours after leaving the residence occupied by the child prior to the change.

(6) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

(7) Whoever obstructs the representative of an institution from entering into the residence under clause (a) of sub-section (5) or contravenes any of the provisions of that sub-section shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees or with both.

Revocation of interim order.

18. (1) On the application of any person, the court may in its discretion revoke an interim order in respect of any child on such terms and conditions as the court thinks fit and while revoking an interim order, may make an order for the refund by such person as may be specified therein of the whole or any part of any money spent for the benefit of the child by the applicant for an adoption order.

(2) Any such order for the refund of money may be executed as a decree for the payment of money passed by the court in favour of the applicant for an adoption order.

Return of child on revocation of interim order, etc.

19. (1) Where in pursuance of an interim order a child is placed in the care and custody of the applicant for an adoption order and the interim order is revoked under section 18 or where an order is made dismissing the application for an adoption order, the applicant shall cause the child to be returned to the person or the institution from whose custody he received the child or to such other person or institution as the court may specify in this behalf.

(2) Whoever contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both; and the court by which the offender is convicted may order the child in respect of whom the offence is committed to be returned to the person or the institution referred to in sub-section (1).

Matters to be considered in making adoption orders.

20. (*1*) The court before making an adoption order shall be satisfied—

(*a*) that every person or the institution whose consent is required under this Act, and whose consent has not been dispensed with, has consented to, and understands the nature and effect of, the adoption order for which the application has been made and in particular in the case of any parent, understands that the effect of the adoption order will be permanently to deprive him of his parental rights;

(*b*) that the order, if made, will be for the welfare of the child; and

(*c*) that the applicant has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

(*2*) In determining whether an adoption order, if made, will be for the welfare of the child, the court shall have *inter alia* regard to the health of the applicant supported by a certificate of a registered medical practitioner and shall give due consideration to the wishes of the child having regard to his age and understanding.

(*3*) The court in making an adoption order may impose such terms and conditions as it may think fit and in particular, may require the applicant to make by bond or otherwise, such provision for the child, as in the opinion of the court is just and proper.

Decision of court.

21. At the conclusion of the hearing of an application for an adoption order in respect of a child, the court shall make either an adoption order in respect of the child or an order dismissing the application.

Appeal from orders of court.

22. (*1*) An appeal shall lie to the High Court from every order made under section 21.

(*2*) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority and follow the same procedure with respect to an appeal under this section as if the appeal is from an original decree passed by the court.

(*3*) Every appeal under this section shall be preferred within a period of thirty days from the date of the order of the court.

(*4*) The decision of the High Court on appeal under this section and subject only to such decision, the order of the court under section 21, shall be final and conclusive.

Proceedings may be in camera.

23. Every proceeding under this Chapter shall be conducted *in camera* if either party so desires or if the court, or in the case of an appeal, the High Court, thinks fit to do so.

24. (*1*) An adoption order shall take effect on such date as may be specified therein by the court or where an appeal has been preferred against an order made under section 21, as soon as the appellate order is pronounced by the High Court.

(2) Every adoption order shall confer the surname of the applicant on the adopted child with such first or personal name as the court may, on the application of the person who is applying for the adoption order, fix.

(3) An adopted child shall be deemed to be the child of his adoptive parent and the adoptive parent shall be deemed to be the parent of the child as if the child had been born to that parent in wedlock, for all purposes with effect from the date on which the adoption order takes effect and on and from such date all the ties of the child in the family of his birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family.

Provided that—

(a) the child cannot marry any person whom the child could not have married if the child had continued in the family of his birth;

(b) any property which vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attaching to the ownership of such property including the obligations, if any, to maintain the relatives in the family of his birth;

(c) the adopted child shall not divest any person of any property which vested in such person before the date on which the adoption order takes effect.

(4) The adopted child shall, unless otherwise provided in the consent, or in the adoption order, have, on and from the date on which adoption order in respect of the child takes effect, the same religion as that of the adoptive parent.

CHAPTER IV

SOCIAL WELFARE INSTITUTIONS

Licensing of Institutions.

25. (1) It shall not be lawful for any institution to make any arrangements for the adoption of a child unless that institution is licensed as a social welfare institution under this Act.

(2) Every person desiring to establish an institution shall make an application to the licensing authority (who shall be an officer of the State Government appointed as licensing authority by that Government) in such form and containing such particulars as may be prescribed:

Provided that an institution in existence at the commencement of this Act shall be allowed a period of three months from such commencement to make an application for a licence.

(3) On receipt of an application under sub-section (2) the licensing authority, after making such inquiry as he thinks necessary, shall be an order in writing either grant the licence or refuse to grant it.

(4) Where a licence is refused, the grounds for such refusal shall be communicated to the applicant in the prescribed manner.

(5) A licence unless sooner revoked, shall remain in force for such period as may be specified in the licence and may, on an application made in this behalf before sixty days of the date of its expiry, be renewed for such period as the licensing authority may think fit:

Provided that a licence may be renewed on an application made within sixty days before the date of its expiry if the licensing authority is satisfied that there was sufficient cause for not making an application earlier.

(6) Every licence granted under this Act shall be in the prescribed form and shall be subject to such conditions as may be prescribed.

(7) No fee shall be charged for the grant or renewal of a licence under this Act.

Licence not transferable.

26. A licence granted under this Act shall not be transferable.

Revocation of licence.

27. (1) The licensing authority may, without prejudice to any other penalty which may have been incurred under this Act, for reasons to be recorded in writing, revoke a licence granted under this Act—

(a) if any of the provisions of this Act or any of the rules made thereunder relating to the grant of licences or any of the conditions of the licence are contravened; or

(b) if the licensing authority is not satisfied with the conditions, management or superintendence of the institution concerned:

Provided that before making an order of revocation the licensing authority shall give the licencee reasonable opportunity to show cause why the licence should not be revoked.

(2) Where a licence in respect of an institution has been revoked under sub-section (1), such institution shall cease to function—

(a) where no appeal has been preferred, against the order of revocation,, immediately on the expiry of the period prescribed for the filing of such an appeal;

(b) where an appeal has been preferred but the order of revocation has been confirmed, whether with or without any modifications, from the date of the appellate order.

(3) On the revocation of a licence in respect of an institution, the licensing authority may direct that any child who is an inmate of the institution on the date of such revocation shall be—

(a) transferred to another institution; or

(b) placed in the care and custody of such person as is in the opinion of the licensing authority a fit and proper person to be entrusted with the care and custody of the child.

Appeals.

28. (1) Any person aggrieved by an order of the licensing authority refusing to grant a licence or revoking a licence may, within such time as may be prescribed, prefer an appeal to the State Government against such refusal or revocation.

(2) The order of the State Government on such appeal and subject only to such order, the order of the licensing authority shall be final any conclusive.

Penalties.

29. Any person who contravenes any of the provisions of this Chapter or any of the rules made under this Act relating to the grant of licences or any of the conditions of a licence, shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

CHAPTER V

CARE AND CUSTODY OF THE CHILD AWAITING ADOPTION

Restriction on removal of child by parent or guardian after giving consent.

30. Where a child is in the care and custody of a person other than his parent or guardian, and an application by that person for an adoption order in respect of the child is pending in a court, then, such parent or guardian, if he has signified his consent to the making of an adoption order in pursuance of the application, shall not be entitled, except with the leave of the court, to remove the child from the care and custody of the applicant and in considering whether to grant or refuse such leave, the court shall have regard to the welfare of the child.

Delivery of child by institution in to the care of applicant for adoption order, etc.

31. (1) At any time after an application for an adoption order in respect of a child who is in the care and custody of an institution, has been made to a court, that institution may, the leave of the court, deliver the child into the care and custody of the person who has made the application in pursuance of arrangements made by the institution for the adoption of the child by that person.

(2) After a child has been delivered into the care and custody of the person aforesaid and before an adoption order has been made on the application of that person in respect of the child—

(a) that person may give notice in writing to the institution of his intention not to retain the care and custody of the child; or

(b) the institution may give notice in writing to that person of its intention not to allow the child to remain in his care and custody:

Provided that no notice shall be given in respect of the child under clause (a) or clause (b) except with the leave of the court.

(3) Where a notice is given to an institution by any person, or by an institution to any person under sub-section (2), or where an application for adoption order made by any person in respect of a child delivered into his care and custody by an institution, is refused by the court or withdrawn by the applicant, that person shall, within seven days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the institution and the institution shall receive the child.

(4) It shall be sufficient compliance with the requirements of sub-section (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the institution.

(5) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

CHAPTER VI

MISCELLANEOUS

Prohibition of certain payments.

32. (*1*) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for, or in consideration, of—

(*a*) the adoption by that person of a child; or

(*b*) the grant by that person of any consent required in connection with the adoption of a child; or

(*c*) the transfer by that person of the care and custody of a child with a view to the adoption of the child; or

(*d*) the making by that person of any arrangements for the adoption of a child.

(*2*) Any person who makes or gives or agrees or offers to make or give any payment or reward prohibited by this section or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be punishable with imprisonment for a term which may extend to six months or with fine or with both; and the court may order any child in respect of whom the offence has been committed, to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

(*3*) This section does not apply to any payment made to an institution by a parent or guardian of a child or by a person who adopts or proposes to adopt a child, being any payment in respect of expenses reasonably incurred by the institution in connection with the adoption of the child or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.

Restrictions upon advertisements.

33. (*1*) Except with the leave of the court competent to entertain an application for an adoption order, it shall not be lawful for any advertisement to be published indicating—

(*a*) that the parent or guardian of a child desires to cause the child to be adopted; or

(*b*) that a person desires to adopt a child; or

(*c*) that any person (not being an institution) is willing to make arrangements for the adoption of a child.

(*2*) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be punishable with fine which may extend to one thousand rupees.

Restrictions on removal of child for adoptions outside India.

34. (*1*) Except under the authority of an order under section 35, it shall not lawful for any person not being a guardian or relative of the child, to take or send out of India a child who is a citizen of India to any place outside India with a view to the adoption of the child (whether in law or in fact) by any person.

(*2*) Any person who takes or sends a child out of India in contravention of sub-section (*1*) or makes or takes part in any arrangements for

transferring the care and custody of a child to any person for that purpose shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(3) In any proceeding under this section a report by an Indian consular officer or an Indian diplomatic officer or a deposition made before an Indian consular Officer or an Indian diplomatic officer and authenticated under the signature of that officer shall, upon proof that the officer or the deponent cannot be found in India, be admissible as evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

Provisional adoption by person domiciled outside India.

35. (1) If the court is satisfied, upon an application being made by a person who is not domiciled in India, that the applicant intends to adopt a child under the law of, or within the country in which he is domiciled, and for that purpose desires to remove the child from India either immediately or after an interval, the court may, subject to the provisions of this section, make an order (in this section referred to as a provisional adoption order) authorising the applicant to remove the child for the purpose aforesaid and giving to the applicant the care and custody of the child pending his adoption:

Provided that before making a provisional adoption order the court shall be satisfied that the welfare and interests of the child shall be safeguarded under the laws of the country of the adoptive parent.

(2) A provisional adoption order may be made under this section in any case where, apart from the domicile of the applicant, an adoption order could be made in respect of the child under this Act but shall not be made in any other case.

(3) The provisions of this Act relating to an adoption order shall, as far as may be, apply in relation to a provisional order made under this section.

Citizenship of adopted child.

36. Notwithstanding anything contained in any other law for the time being in force, the citizenship of a child adopted under this Act, if it is different from the citizenship of the adopter, shall, on and from the date on which the adoption order in respect of the child takes effect, be the same as that of the adopter or in the case of a joint adoption of the male adopter.

Power to make rules.

37. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generally of the provisions of sub-section (1), such rules may provide for—

(a) the manner in which an application for an adoption order shall be made;

(b) the manner in which the consent of an institution may be given;

(c) the form any particulars of an application for a licence in respect of an institution;

(*d*) the manner in which the grounds of refusal of a licence shall be communicated to the applicant;

(*e*) the form and conditions of a licence;

(*f*) the time within which an appeal may be preferred to the State Government against an order of refusal or revocation of a licence; and

(*g*) any other matter which has to be or may be prescribed.

(*3*) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and, if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only is such modified form or be of no effect; as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

To promote the best interests of the child, and to safeguard the rights of his natural and his adoptive parents an effective adoption procedure is necessary. This will reduce to a minimum the hazards that now surround adoption in many places, and would also bring about a wider use of the legal safeguards to which children without families of their own are entitled.

At present adoption or "Dattakavidhan" is considered necessary only to perform sacramental and ablution rites for ancestors, and only a son is entitled to perform this ceremony. Therefore, girls are not given or taken in adoption and a male child is taken in adoption which is nearest of kin or comes from the same family of the adoptive father. In certain cases a woman has no right to adopt except with the assent of her husband. All these lacuane in the existing law require thorough examination and change and a general law of adoption which can apply to all communities is urgently necessary.

Nothing in this Bill is intended to affect the existing law of adoption applicable to Hindus. This Bill is primarily intended for the benefit of communities other than Hindus. It is, however, also made clear that if Hindus are desirous of adopting a child under this Act, it shall be competent for them to do so.

DR. (MRS.) MANGALADEVI TALWAR

FINANCIAL MEMORANDUM

Under clause 25 of the Bill provision is made for the appointment of a licensing authority to whom an application for the establishment of a Social Welfare Institution is to be made. This will involve certain expenditure from the Consolidated Fund of India in the case of Central Government. The amount involved cannot precisely be stated at this stage but it will not be more than Rs. 50,000 per annum.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 37 authorises the Central Government to make rules to carry out the purposes of the Act.

The rule-making power sought to be conferred on the Central Government is of normal character.

B. N. BANERJEE,
Secretary.

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